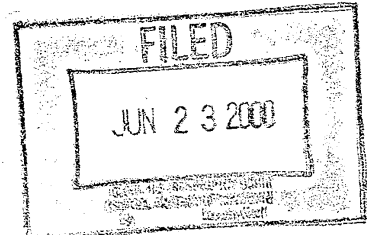
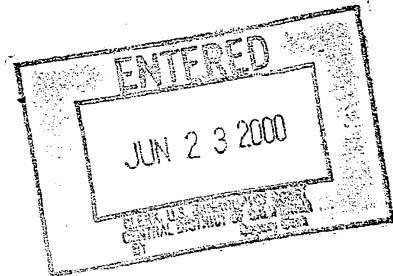


FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

In re:)	BK CASE NO. SV00-11935-AG
)	(Chapter 7)
RAY KANGARLOO and)	
HOMA KANGARLOO,)	ADVERSARY CASE NO. 00-01160
)	
Debtors.)	MEMORANDUM OF DECISION
)	
<hr/>		
RAY KANGARLOO and)	
HOMA KANGARLOO,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MICHAEL AROTIONIANS,)	
)	
Defendant.)	
)	
<hr/>		

NATURE OF THE PROCEEDINGS

Debtors, Ray Kangarloo and Homa Kangarloo ("the Kangarloos"), move the court for entry of default judgment on their Complaint to Disgorge Profits and for Damages against Michael Arotionians, seeking damages and attorney's fees pursuant to 11 U.S.C. § 110. The

1 complaint was filed on March 17, 2000, and, along with the summons,
2 was served on Arotionians on the same day. The time for filing an
3 answer or other responsive pleading expired on April 17, 2000.
4 Arotionians has failed to file an answer or responsive pleading. On
5 April 20, 2000, the default was entered, resulting in the Kangarloos
6 filing the instant motion, which was submitted without hearing.

7
8 **STATEMENT OF FACTS**

9 On August 3, 1999, Ray Kangarloo ("Kangarloo") contacted
10 Arotionians for the purpose of filing a Chapter 7 bankruptcy petition.
11 Arotionians maintained that he was an attorney and that he worked for
12 the Law Office of Brian W. Kellogg ("law offices"). He provided
13 Kangarloo with a business card on which his name was printed, along
14 with the name, address and telephone number of the law offices. The
15 business card did not specify any occupational title, position or
16 function for Arotionians.

17 Arotionians told Kangarloo that he would prepare and file the
18 bankruptcy petition and that he would represent the Kangarloos at the
19 341(a) meeting of creditors. Arotionians indicated that the fee for
20 these services would be \$675 and that the case could not be filed
21 until Arotionians was paid in full. Arotionians also requested that
22 Kangarloo provide him with copies of their bills. Kangarloo then
23 remitted a check in the amount of \$300 to Arotionians, which cleared
24 on August 4, 1999.

25 On August 21, 1999, Kangarloo brought copies of the bills to
26 Arotionians. He told Kangarloo that he would write letters to each
27

1 creditor, and that the Kangarloos should begin referring their
2 creditors to him. At that meeting, Kangaroo remitted another check
3 in the amount of \$375, which cleared on August 23, 1999.

4 Approximately one month later, Kangaroo contacted Arotionians to
5 find out if he had prepared the bankruptcy petition and schedules.
6 Arotionians indicated that he had not completed the preparation of the
7 documents. On or about September 25, 1999, the Kangarloos went to the
8 law offices to meet with Arotionians and sign the documents. There
9 was signage at the office indicating that it was the location of the
10 Law Offices of Brian W. Kellogg. Arotionians presented the petition
11 and schedules for the Kangarloos' signatures, explaining the meaning
12 of each document. Arotionians advised the Kangarloos that it was not
13 necessary for them to list their residence on the schedules, as they
14 intended to retain the residence. The Kangarloos were not provided
15 with copies of the signed documents.

16 During this period, the Kangarloos continued to receive calls
17 from creditors who had been unable to reach Arotionians. In early
18 October, 1999, Kangaroo attempted to contact Arotionians at least
19 twice a day to correct the matter. When Arotionians finally returned
20 Kangaroo's calls about a week later, he informed Kangaroo that the
21 calls from the creditors were normal and should be expected.

22 Subsequently, the Kangarloos made numerous unsuccessful attempts
23 to obtain a file number and a copy of the petition and schedules. At
24 one point, Arotionians told the Kangarloos to come to the law offices
25 to obtain the case file number. However, Arotionians failed to appear
26 for the meeting. On or about October 16, 1999, the Kangarloos
27

1 appeared at the law offices, and were told by Arotionians that he did
2 not have a case number, but would fax it to them when he acquired one.
3 On or about November 4, 1999, Arotionians did provide a case number to
4 the Kangarloos' daughter, advising her that the case had been filed on
5 October 28, 1999. However, he refused to provide the Kangarloos with
6 a copy of the petition and schedules, contending that they had agreed
7 with him initially that they would not receive copies of these
8 documents.

9 On February 16, 2000, Kangarloo retained the law firm of Price &
10 Associates ("Price") to investigate whether a bankruptcy case had been
11 filed on behalf of the Kangarloos. They authorized Price to file a
12 Chapter 7 bankruptcy petition on their behalf, in the event that no
13 case had been filed. Finding that no case had been filed, Price filed
14 a petition and schedules on February 25, 2000.

15 On March 17, 2000, the Kangarloos filed an adversary action
16 against Arotionians, entitled "Complaint to Disgorge Profits and for
17 Damages; 11 U.S.C. 110." In their prayer for relief, the Kangarloos
18 requested an award of damages pursuant to certain subsections of
19 § 110. Specifically, they assert claims against Arotionians under
20 subsection (d)(1) in the amount of \$500.00, for failing to present the
21 Kangarloos with a copy of the signed petition and schedules; (f)(1),
22 in the amount of \$500.00 for using a derivation of the word "legal" in
23 his advertising; (g)(1), in the amount of \$500.00 for collecting the
24 court filing fee from the Kangarloos; and (h)(1), for collecting a fee
25 without providing worth while services. In addition, the Kangarloos
26 requested damages and reasonable attorney's fees and costs pursuant to
27

1 11 U.S.C. § 110(i)(1) totaling \$5,550.

2 On March 22, 2000, Joanna M. Curtis, an attorney associated with
3 Price & Associates, contacted Brian Kellogg, who stated that
4 Arotionians was never in his employ, though from time to time he
5 contracted with Arotionians regarding limited assignments.

6 Arotionians failed to answer the complaint or otherwise file a
7 responsive pleading by the deadline of April 17, 2000. On April 20,
8 2000, Arotionians' default was entered, followed by the Kangarloos
9 filing a motion for default judgment. In support of their motion, the
10 Kangarloos submitted the declarations of Ray Kangarloo and Joanna
11 Curtis. Attached to the motion were photocopies of a business card
12 bearing the name of Michael Arotionians, as well as two canceled
13 checks, payable to Michael Arotionians. The checks were issued by Ray
14 Kangarloo, one dated August 3, 1999, in the amount of \$300.00, and the
15 other dated August 21, 1999, in the amount of \$375.00. Copies of
16 Arotionians' endorsement were attached as well. Arotionians has not
17 responded to this motion.

18

19

DECISION

20 The court finds that Arotionians, as a bankruptcy preparer, has
21 violated 11 U.S.C. § § 110 (d)(1); (f)(1), (g)(1) and (h)(2). In
22 addition, the court finds that Arotionians has engaged in fraudulent,
23 unfair and deceptive acts, these violations and findings being
24 certified to the district court, pursuant to § 110(i)(1), concurrently
25 with the filing of this Memorandum of Decision.

26 The Kangarloo's motion for default judgment is denied for the
27

28

1 following reasons. Damages requested under § 110(i)(1) must be
2 requested from the district court on motion and after a hearing. See
3 11 U.S.C. § 110(i)(1). Amounts requested for violations of § §
4 110(d)(1), (f)(1) and (g)(1) constitute fines, as described in the
5 statute, and therefore, are payable to the United States Treasury.
6 See 11 U.S.C. §§ 110(d)(2), (f)(2) and (g)(2). Fees found to be in
7 excess of the value of services rendered pursuant to § 110(h)(2) must
8 be turned over to the Chapter 7 Trustee. See 11 U.S.C. § 110(h)(2).

10 DISCUSSION

11 1. Arotionians qualifies as a bankruptcy petition preparer under 11
12 U.S.C. § 110(a).

13 Section 110 applies to only "bankruptcy petition preparers."
14 Fesseden v. Ireland, (In re Hobbs), 213 B.R. 207, 211 (Bankr. D. Me.
15 1997). The statute defines "bankruptcy petition preparer" as a
16 "person, other than an attorney or an employee of an attorney, who
17 prepares for compensation a document for filing." 11 U.S.C.
18 § 110(a)(1). The court finds that Arotionians qualifies as a
19 bankruptcy petition preparer, so as to subject him to the provisions
20 of § 110.

21 Arotionians is not an attorney, nor in the employ of attorney
22 Brian Kellogg. The fact that the petition and schedules prepared by
23 Arotionians were never filed is immaterial to a determination that
24 Arotionians qualifies as a bankruptcy petition preparer within the
25 meaning of the statute. It is sufficient that Arotionians prepared
26 documents ostensibly to be filed in the United States Bankruptcy
27 Court. See In re Burdick, 191 B.R. 529, 533-534 (Bankr. N.D. N.Y.

1 1996). See also In re Crowe, 243 B.R. 43, 50 (9th Cir. BAP 2000)
2 (holding that it is the selling of services which subjects the
3 bankruptcy petition preparer to the court's jurisdiction for
4 violations of § 110).

5
6 **2. In the instant case, relief by way of an adversary action is
7 appropriate.**

8 The applicable provisions of 11 U.S.C. § 110 do not specify the
9 type of proceeding required to assert a claim alleging a violation of
10 § 110.¹ Amended General Order No. 95-03 of the Bankruptcy Court of
11 the Central District of California provides that a debtor "may file a
12 Motion that the Court Impose a Fine," pursuant to 11 U.S.C. § 110(b)-
13 (g), and "may file a Motion that the Bankruptcy Court Certify to the
14 District Court that the Preparer Engaged in Conduct for Which Damages
15 Should be Awarded," pursuant to 11 U.S.C. § 110(i).

16 In the instant case, as Arotionians never filed the petition and
17 schedules he prepared for the Kangarloos. As the Kangarloos seek a
18 money recovery against Arotionians, an adversary complaint is the
19 appropriate vehicle for bringing Arotionians within the jurisdiction
20 of this court. Bankruptcy Rule 7001, in pertinent part, provides
21 ("[a]n adversary proceeding . . . is a proceeding (1) to recover money
22 or property . . . ").²

23 ¹ As noted by General Order No. 96-3 of the District Court for
24 the Central District of California, § 110(i) "says nothing about how
25 the proceeding . . . is commenced in the Bankruptcy Court or the form
of the proceeding in that court."

26 ² Amended General Order No. 95-03 describes the following
27 procedure with regard to the filing of a motion pursuant to 11 U.S.C.
§§ 110(b)-(g) and (i): "[t]he motion shall be accompanied by a

1 3. Arotionians violated 11 U.S.C. §§ 110(d)(1), (f)(1), and (g)(1).

2 Section 110(d)(1) requires a bankruptcy petition preparer to
3 furnish the debtor with a copy of the petition and schedules no later
4 than the time when the documents are presented to the debtor for his
5 or her signature. 11 U.S.C. § 110(d)(1). The court finds that
6 Arotionians failed to provide the Kangarloos with copies of their
7 petition and schedules at the time that they signed these documents
8 and accordingly has violated § 110(d)(1).

9 Section 110(f)(1) prohibits a bankruptcy petition preparer from
10 using the term "legal" or a similar term in any advertisements, or to
11 advertise under any category that includes the term "legal" or a
12 similar term. 11 U.S.C. § 110(f)(1). As one court has explained,
13 § 110(f)(1)

14 is appropriately viewed as a measure meant to ensure that debtors
15 understand exactly what they will and will not receive from
16 bankruptcy petition preparers. Petition preparer advertising
must keep well clear of any suggestion that the preparer will be
offering legal services or insights.

17 Hobbs, 213 B.R. at 215.

18 In the instant case, Arotionians violated § 110(f)(1) by holding
19 himself out as someone permitted to offer legal services by (1)
20 providing Ray Kangarloo with a business card identifying himself as
21 connected with the Law Offices of Brian W. Kellogg, (2) meeting with
22 the Kangarloos at premises containing signage identifying the premises

23 _____
24 declaration under penalty of perjury or a request for judicial notice
25 and copies of any documentary evidence which support the motion. The
26 moving party shall serve on the bankruptcy petition preparer, the
27 debtor, the Trustee, and the United States Trustee, a Notice of Motion
... , a copy of the motion, and all supporting evidence." The
Kangarloos have fulfilled these requirements in the course of moving
for default judgment on the complaint.

1 as a law office, and (3) holding himself out as an attorney. See In
2 re Kaitangian, 218 B.R. 102, 108 (Bankr. S.D. Calif. 1998) (finding a
3 violation of § 110(f)(1) where the petition preparer created the
4 impression that he could offer legal advice); In re Moore, 232 B.R. 1,
5 10, 12 (Bankr. D. Me. 1999) (finding a violation of § 110(f)(1) where
6 the advertisement misled consumers into thinking they were purchasing
7 far more than the allowed document preparation services).

8 Section 110(g)(1) states that "[a] bankruptcy petition preparer
9 shall not collect or receive any payment from the debtor or on behalf
10 of the debtor for the court fees in connection with filing the
11 petition." 11 U.S.C. § 110(g)(1). Courts have disagreed regarding
12 the scope of the prohibitions contained in this statute. Some courts
13 have interpreted subsection (g)(1) as prohibiting the bankruptcy
14 petition preparer from accepting a debtor's money order payable to the
15 Clerk of the U.S. Bankruptcy Court and arranging for delivery of that
16 money order, together with the debtor's petition, to that court. See
17 In re Green, 197 B.R. 878, 879 (Bankr. D. Ariz. 1996); In re Jones,
18 227 B.R. 704, 705-6 (Bankr. S.D. Ill. 1998); Burdick, 191 B.R. at 535.

19
20 Other courts have interpreted the statute more liberally,
21 prohibiting only the petition preparer's acceptance of funds for his
22 or her own account regarding the filing fee, and thereby prohibiting
23 the preparer "from misrepresenting or disguising the costs of the
24 petition preparation services by requiring the debtor to furnish a
25 single check for payment of both the petition preparation services and
26 the filing fee," as well as prohibiting the preparer "from enjoying

1 any benefit from the use of the debtor's funds, or from commingling
2 them with any other funds." In re Reed, 208 B.R. 695, 697 (Bankr.
3 N.D. Calif. 1997).

4 The Kangarloos paid \$675.00 to Arotionians, consisting of two
5 checks, one dated August 21, 1999, in the amount of \$300.00, and the
6 other dated August 21, 1999, in the amount of \$375.00. As to the
7 August 3rd check, it stated "For Bankruptcy - Balance \$375.00". The
8 August 21st check stated that the \$375.00 was "For Bk Filing". The
9 phrase "For Bk Filing" indicates that the \$375 included a filing fee.

10 In addition, Ray Kangarloo states in his declaration, "Defendant
11 explained that (a) he would prepare and file my bankruptcy case, (b)
12 would represent me at my 341(a) meeting of creditors, (c) his fee for
13 the foregoing services would be \$675.00, (d) Defendant could not file
14 my case until Defendant was paid in full and (e) he needed, among
15 other things, copies of my bills." (Ref. Para.2, lines 7-11).

16 This evidence reflects that under the liberal interpretation of
17 the statute, Arotionians violated § 110(g)(1). The Kangarloos did not
18 write a check payable to the bankruptcy court for the filing fees
19 separate from the checks they wrote to Arotionians. Instead, in
20 receiving \$675 from the Kangarloos, Arotionians collected for his own
21 account funds which were intended to cover filing fees for the
22 Kangarloos' bankruptcy case.

23 **4. Arotionians did not violate 11 U.S.C. § 110(h)(1).**

24 In their Third Cause of Action, the Kangarloos state that
25 Arotionians failed to disclose to the court that he received fees in
26 connection with the preparation and filing of their bankruptcy case,
27

1 in violation of 11 U.S.C. § 110(h)(1).

2 Section 110(h)(1) requires a bankruptcy petition preparer to
3 file, "within ten days after the date of the filing of a petition," a
4 declaration under penalty of perjury disclosing any fee received from
5 or on behalf of the debtor within twelve months immediately prior to
6 the filing of the case. 11 U.S.C. § 110(h)(1). The statute requires
7 the bankruptcy petition to be filed in order to trigger the
8 requirement that the declaration be filed within the following thirty
9 days. As Arotionians never filed the bankruptcy petition and
10 schedules, he did not violate § 110(h)(1).

11
12 **5. Arotionians Violated 11 U.S.C. § 110(h)(2).**

13 The court finds, however, that the Kangarloos have sufficiently
14 pleaded a violation of subsection (h)(2). Subsection (h)(2) allows
15 the court to disallow and order the immediate turnover . . . of any
16 fee received from or on behalf of the debtor within 12 months
17 immediately prior to the filing of the case found to be in excess of
18 the value of services rendered for the documents prepared." 11 U.S.C.
19 § 110(h)(2).

20 It is immaterial that the Kangarloos do not specifically refer to
21 subsection (h)(2) in their complaint. Doss v. Central Bell Telephone
22 Co., 834 F.2d 421, 424 (5th Cir. 1987). Of significance is whether
23 the complaint sets forth sufficient facts to give Arotionians "fair
24 notice of what the plaintiff's claim is and the grounds upon which it
25 rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).

26 The Kangarloos received no value for the \$675 fee paid to
27
28

1 Arotionians, as he neither filed a petition and schedules nor provided
2 the Kangaroo with a copy of those documents. In addition, he failed
3 to perform other services as promised, such as contacting the
4 Kangaroos' creditors and attending the meeting of creditors. The
5 court finds that the complaint provides Arotionians with sufficient
6 notice of an alleged violation of subsection (h)(2).

7
8 **6. Arotionians engaged in fraudulent, unfair and deceptive conduct**
9 **entitling the Kangaroos to damages under § 110(i)(1).**

10 The court finds that the Kangaroos have established a prima
11 facie case entitling them to damages under § 110 (i)(1). Arotionians'
12 violation of subsections (d)(1), (f)(1), (g)(1) and (h)(2) provide the
13 basis for an award of damages under § 110(i)(1). Ross v. Smith (In re
14 Gavin), 181 B.R. 814, 824 (Bankr. E.D. Pa. 1995) (noting that
15 violations of several subsections of § 110 are "more than sufficient
16 to trigger the § 110(i) penalties"). In addition, Arotionians
17 committed fraudulent, unfair and deceptive acts, making him liable for
18 damages under § 110 (i)(1).

19 The record before the court reflects that Arotionians created the
20 false impression that he was an attorney working for the Law Offices
21 of Brian W. Kellogg. Arotionians represented to the Kangaroos that
22 he was an attorney and charged a fee excessive for document
23 preparation services, but commensurate with providing legal services.³

24 ³ "[The services of bankruptcy petition preparers are strictly
25 limited to typing bankruptcy forms." Kaitangian, 218 B.R. at 113.
26 Consequently, courts have considered bankruptcy petition preparation
27 fees to be excessive when greater than the usual charge for typing
28 services. See In re Mullikin, 231 B.R. 750, 753 (Bankr. W.D. Mo.
1999) (concluding that "the work which a petition preparer may do is

1 In addition, by giving the Kangarloos a business card imprinted with
2 both his name and the name, address, and telephone number of an
3 established law office, as well as by meeting the Kangarloos at the
4 law office, Arotionians created the false impression that he was part
5 of an established law firm. See Moore, 232 B.R. at 7 (finding the
6 petition preparer's acts to be fraudulent, unfair and deceptive when
7 his "advertisements, . . . fee structure, and his course of conduct
8 combine[d] to create a misleading impression that he brings to his
9 clients some measure of lawfully salable bankruptcy expertise");
10 Gavin, 181 B.R. at 823 (fraudulent, unfair and deceptive acts included
11 "furnishing [the debtor] with a self-serving, deceptive business
12 card," and "appear[ing], to lay persons, to be attorneys or acting
13 under the supervision of attorneys").

14 In addition. Arotionians received money from the Kangarloos for
15 filing their case, which never occurred. He misrepresented to the
16 Kangarloos that he had filed their case, and, in furtherance of that
17 misrepresentation, he furnished the Kangarloos with a false case
18 number. See Burdick, 191 B.R. at 533-534.

19 Arotionians also engaged in the unauthorized practice of law, by
20 advising the Kangarloos regarding the scheduling of their primary
21 residence. State law determines whether a bankruptcy petition
22

23 simply to type forms and file documents"); Moore, 232 B.R. at 15 ("[a]
24 petition preparer may be the do-it-yourself debtor's scrivener --
25 nothing more"). Specifically, courts have found fees to be excessive
26 when they begin to approach the level of the usual charge for an
27 attorney's services. See Wagner, 241 B.R. at 122 (finding a charge of
\$250 to be excessive under subsection (h)(2), when "assuming arguendo
that [the petition preparer] had not illegally engaged in the
unauthorized practice of law, would have been not more than \$50").

1 preparer has engaged in the unauthorized practice of law. Kaitangian,
2 218 B.R. at 108, quoting 2 Collier on Bankruptcy par. 110.12 (15th ed.
3 1997); 11 U.S.C. § 110(k). In California, the unauthorized practice
4 of law "includes legal advice and counsel and the preparation of legal
5 instruments and contracts by which legal rights are secured although
6 such matter may or may not be depending in a court." Baron v. City of
7 Los Angeles, 86 Cal.Rptr. 673, 677 (1970). See also People v.
8 Landlords Professional Services, 264 Cal.Rptr. 548, 553 (App. 1989)
9 (distinguishing between clerical services such as "fill[ing] the forms
10 in at the specific direction of the client" and "personally advis[ing]
11 the client with regard to his specific case").⁴

12 The court, having found facts rendering Arotionians liable for
13 damages under § 110(i)(1), recommends to the district court that it
14 award damages pursuant to § 110(i)(1) in the amount of \$5,500.00.

15 The statute provides for an award to the debtor of (1) actual
16 damages, 11 U.S.C. § 110(i)(1)(A); (2) the greater of \$2,000 or twice
17 the amount paid by the debtor to the bankruptcy petition preparer for
18 the preparer's services, 11 U.S.C. § 110(i)(1)(B); and (3) reasonable
19 attorneys' fees and costs in moving for damages under this subsection.
20 11 U.S.C. § 110(i)(1)(C). Based on the declaration of Price, the
21

22 ⁴ There is disagreement among bankruptcy courts whether the
23 unauthorized practice of law per se constitutes a fraudulent, unfair
24 and deceptive act in violation of subsection (i), or whether the
25 unauthorized practice is in violation of subsection (i) only if the
26 conduct itself was culpable. Compare Moore, 232 B.R. at 8, with In re
27 Losee, 195 B.R. 785, 786 (Bankr. M.D. Fla. 1996) and In re
Chamberland, 190 B.R. 972, 978 (Bankr. M.D. Fla. 1996). However,
inasmuch as Arotionian's advice that the Kangarloos need not schedule
their primary residence was incorrect, under either standard
Arotionian's unauthorized practice of law constitutes conduct
fraudulent, unfair and deceptive, in violation of subsection (i).

1 Kangarloos have established that they are entitled to an award of
2 \$2,050 for actual damages, representing the amount they had to pay
3 Price to file their bankruptcy petition, plus an award of at least
4 \$1,500, representing attorney's fees and costs which they have
5 incurred in filing the instant motion for damages under § 110 (i). In
6 addition, based on the fact that the Kangarloos paid Arontionians \$675
7 for his services, they are entitled to an award of \$2,000, that amount
8 being greater than twice the amount paid for Arontionians' services.

9
10 7. Section 110(i)(1) requires that any damages be awarded by the
11 district court, and § 110(h)(2) requires that any excessive fees
be turned over to the Chapter 7 Trustee.

12 The bankruptcy court has found and certifies that Arotionians has
13 violated §§ 110(d)(1), (f)(1), (g)(1) and (h)(2), and that Arotionians
14 has engaged in fraudulent, unfair and deceptive conduct. The
15 Kangarloos seek monetary damages under § 110(i)(1) for these
16 violations and unlawful conduct.

17 Section 110(i)(1) provides:

18 "(i)(1) ... if a bankruptcy petition preparer
19 violates this section or commits any fraudulent,
20 unfair, or deceptive act, the bankruptcy court
21 shall certify that fact to the district court and
the district court, on motion of the debtor, the
trustee, or a creditor and after a hearing, shall
order the bankruptcy petition preparer to pay to
the debtor-

22 (A) the debtor's actual damages;

23 (B) the greater of-

(i) \$2,000; or

24 (ii) twice the amount paid by the
debtor to the bankruptcy petition
preparer for the preparer's services;
25 and

26 (C) reasonable attorneys' fees and costs
in moving for damages under this
27 subsection.

1 (2) If the trustee or creditor moves for damages
2 on behalf of the debtor under this subsection, the
3 bankruptcy petition preparer shall be ordered to
4 pay the movant the additional amount of \$1,000
plus reasonable attorneys' fees and costs
incurred.

5 Section 110(i)(1) mandates that a request be made to the district
6 court to award damages for violations of § 110(i). Therefore, the
7 Kangarloos' motion for a default judgment seeking monetary damages
8 under Section 110(i) must be denied without prejudice to their
9 applying to the district court for an award of damages.

10 In addition, § 110(h)(2) requires that any funds determined to
11 have to be paid to Arotionians in excess of the value of the services
12 rendered to the Kangarloos is required to be turned over to the
13 Chapter 7 trustee. This precludes the turnover of these funds to the
14 Kangarloos.⁵ Therefore, the Kangarloos' motion for default judgment
15 seeking a turnover of excessive fees to them must be denied.

16
17 8. The Kangarloos are not entitled to recover fines of \$500 per
18 violation for Arotionians' violation of 11 U.S.C. § 110(d)(1),
(f)(1) and (g)(1).

19 This court has determined that Arotionians violated §§ 110(d)(1),
20 (f)(1) and (g)(1). The Kangarloos have requested that they be awarded
21 damages of \$500 for each violation pursuant to §§ 110(d)(2), (f)(2)
22 and (g)(2). These subsections provide that "[a] bankruptcy petition
23

24 ⁵ The instant case involves none of the special circumstances,
25 such as dismissal of the bankruptcy case, which have led courts to
26 order that the disgorged fees be turned over directly to the debtor.
27 See e.g., Moore, 232 B.R. at 12 ("turnover to the trustee, and
possible exemption of the funds, as the statute contemplates is not
practical"); Hobbs, 213 B.R. at 216.

1 preparer may be fined not more than \$500" for each violation of the
2 respective subsections. 11 U.S.C. § 110(d)(2), (f)(2) and (g)(2)
3 (emphasis added). The Kangarloos' request raises the issue of whether
4 the statute permits the award of the fines described in §§ 110 (d)(2),
5 (f)(2) and (g)(2) to the Kangarloos.

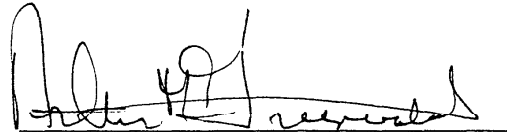
6 This court has found no authority to support an award of the
7 fines described in §§ 110 (d)(2), (f)(2) and (g)(2) to the Kangarloos.
8 Rather, cases which have determined that there has been a violation of
9 §§ 110 (d)(1), (f)(1) or (g)(1) have without exception required the
10 errant bankruptcy petition preparer to remit the fines provided for in
11 the statute to the federal government. See Kaitangian, 218 B.R. at
12 117; Burdick, 191 B.R. at 538; In re Fish, 210 B.R. 603, 609 (Bankr.
13 D. Colo. 1997); In re Paskel, 201 B.R. 511, 520 (Bankr. E.D. Ark.
14 1996); In re Cordero, 185 B.R. 882, 886 (Bankr. M.D. Fla. 1995); In re
15 Wagner, 241 B.R. 112, 122 (Bankr. E.D. Pa. 1999). See also Black's
16 Law Dictionary (7th ed. 1999) (defining fine as "[a] pecuniary
17 criminal punishment or civil penalty payable to the public treasury")
18 (emphasis added); Browning-Ferris Industries of Vermont, Inc. v. Kelco
19 Disposal, Inc., 492 U.S. 257, 265 n.7 (discussing the historical
20 difference between damages and fines).

21 In accordance with the authorities, this court orders Arotionians
22 to pay a fine of \$500 for each subsection violated, to be remitted to
23 the United States Treasury. Therefore, the Kangarloos are not
24 entitled to a default directing that they receive from Arotionians
25 fines described as damages for violations under Subsection (d)(1),
26 (f)(1) and (g)(1).
27
28

1 In setting the fines at the maximum level, the court finds
2 aggravating circumstances evidenced by a pattern of conduct on the
3 part of Arotionians including continual avoidance, deception, apparent
4 conversion of the filing fee, failure to provide services of any
5 value, and failure to answer the allegations contained in the
6 Kangarloos' complaint. See Fish, 210 B.R. at 606.

7 The contents of this Memorandum of Decision shall constitute this
8 bankruptcy court's findings of fact and conclusions of law.

9 DATED: JUNE 23, 2000

A handwritten signature in black ink, appearing to read 'Arthur M. Greenwald', written over a horizontal line.

ARTHUR M. GREENWALD
U.S. Bankruptcy Judge

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5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA**
7

8 In re

9 ROY KANGARLOO, and
10 HOMA KANGARLOO,

Debtor(s).

11 ROY KANGARLOO and
12 HOMA KANGARLOO,

13 Plaintiffs.

14 vs.

15 MICHAEL AROTIONIAN,
16 Defendant.
17

Chapter 7

Case No. SV 00-11935-AG

Adversary No. SV 00-01160-AG

**NOTICE OF ENTRY OF
JUDGMENT OR ORDER AND
CERTIFICATE OF MAILING**

18 **TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:**

19 You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(1)(a)(v), that a judgment
20 or order entitled **MEMORANDUM OF DECISION** was entered on JUN 23 2000

21 I hereby certify that I mailed a copy of this notice and a true copy of the order or Judgment to
22 the person(s) and entities listed on JUN 23 2000.

23 DATED: JUN 23 2000

JON D. CERETTO, Clerk

24 By DEWELL WILLIAMS
25
26

27 (A copy of the judgment or order must be attached to this notice.)
28

SERVICE LIST

1
2
3 Joanna M. Curtis
PRICE & ASSOCIATES
4 15760 Ventura Boulevard
Suite 1100
5 Encino, CA 91436
6 Ray and Homa Kangarloo
8601 Sunland Boulevard
7 Apt. 61
Sun Valley, CA 91352-5412
8
9 Michael Arotionians
c/o Henrik Mosesi
Law Offices of Henrik Mosesi
10 1418 ½ West Kenneth Road
Glendale, CA 91201
11
12 Amy Goldman, Trustee
Lewis, D'Amato, Brisbois & Brisgard
221 North Figueroa Street
13 Suite 1200
Los Angeles, CA 90012
14
15 United States Trustee
221 North Figueroa Street
Suite 800
16 Los Angeles, CA 90012
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5 **UNITED STATES BANKRUPTCY COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA**
7

8 In re

9 ROY KANGARLOO, and
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Debtor(s).

11 ROY KANGARLOO and
12 HOMA KANGARLOO,

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14 vs.

15 MICHAEL AROTIONIANS,

16 Defendant.
17

Chapter 7

Case No. SV 00-11935-AG

Adversary No. SV 00-01160-AG

**NOTICE OF ENTRY OF
JUDGMENT OR ORDER AND
CERTIFICATE OF MAILING**

18 **TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:**

19 You are hereby notified, pursuant to Local Bankruptcy Rule 9021-1(1)(a)(v), that a judgment
20 or order entitled **CERTIFICATION OF FACTS TO THE DISTRICT COURT** was entered on

21 JUN 23 2000

22 I hereby certify that I mailed a copy of this notice and a true copy of the order or Judgment to
23 the person(s) and entities listed on _____ JUN 23 2000.

24 DATED:

JON D. CERETTO, Clerk

25 By ETHEL WILLIAMS
26
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28

(A copy of the judgment or order must be attached to this notice.)

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SERVICE LIST

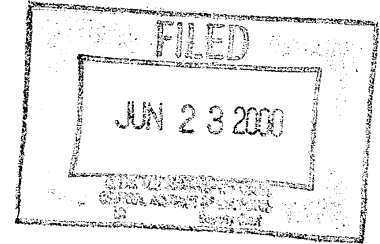
Joanna M. Curtis
PRICE & ASSOCIATES
15760 Ventura Boulevard
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8601 Sunland Boulevard
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Sun Valley, CA 91352-5412

Michael Arotionians
c/o Henrik Mosesi
Law Offices of Henrik Mosesi
1418 ½ West Kenneth Road
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Amy Goldman, Trustee
Lewis, D'Amato, Brisbois & Brisgard
221 North Figueroa Street
Suite 1200
Los Angeles, CA 90012

United States Trustee
221 North Figueroa Street
Suite 800
Los Angeles, CA 90012



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re

ROY KANGARLOO and
HOMA KANGARLOO,

Debtors.

ROY KANGARLOO and HOMA
KANGARLOO

Plaintiffs,

vs.

MICHAEL AROTIONIAN, S,

Defendant.

Chapter 7

Case No. SV-00-11935-AG

ADVERSARY NO. SV 00-01160

**CERTIFICATION OF FACTS
TO THE DISTRICT COURT**


TO THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Pursuant to 11 U.S.C. § 110(i)(1), this bankruptcy court certifies that based upon the contents of the attached Memorandum of Decision filed concurrently, the Defendant, Michael Arotionians, has violated 11 U.S.C. § 110, subsection (d)(1), (f)(1), (g)(1) and (h)(2) and has committed fraudulent, unfair and deceptive acts. Accordingly,

1 he is liable for damages under § 110(i)(1).

2 The Debtors/Plaintiffs, Roy Kangarloo and Homa Kangarloo, the
3 Chapter 7 Trustee, or a creditor, may apply to the district court for
4 damages and/or other relief as provided for in § 110(i).

5
6 Dated: JUNE 23, 2000

7
8 
9 ARTHUR M. GREENWALD
UNITED STATES BANKRUPTCY JUDGE